

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENRY VAWTER, et al.,

CASE NO. C09-1585JLR

Plaintiffs,

ORDER GRANTING IN PART
MOTIONS FOR DEFAULT
JUDGMENT

V.

QUALITY LOAN SERVICE
CORPORATION OF
WASHINGTON, et al.,

Defendants.

I. INTRODUCTION

17 Before the court are Plaintiffs Henry and Rose Vawter’s renewed motions for
18 entry of default judgment against Defendants Twin Capital Mortgage, Inc. (“Twin
19 Capital”) and Paul Financial, LLC (“Paul Financial”). (Dkt. ## 63, 64, 67.)¹ The court
20 has considered the motions, the declaration filed in support thereof (Huelsman Decl.

¹ The motion at docket number 64 is a duplicate of the motion at docket number 63.

1 (Dkt. # 66)), as well as the records and files herein, and GRANTS in part and DENIES in
2 part the motions as stated below.

3 **II. BACKGROUND**

4 On January 12, 2010, counsel appeared in this litigation on behalf of Paul
5 Financial. (Dkt. # 8.) On February 22, 2010, counsel appeared in this litigation on behalf
6 of Twin Capital. (Dkt. # 25.) By order dated February 4, 2010, counsel for Paul
7 Financial withdrew from representing Paul Financial in this matter. (Dkt. # 16.) By
8 order dated May 24, 2010, counsel for Twin Capital withdrew from representing Twin
9 Capital in this matter. (Dkt. # 38.)

10 Local Rule W.D. Wash. GR 2(g)(4)(B) requires a business entity, other than a sole
11 proprietorship, to “be represented by counsel.” *Id.* Further, failure to obtain a
12 replacement attorney may result in the entry of default against the business entity. *See id.*
13 Therefore, on June 2, 2010, the court ordered both Paul Financial and Twin Capital to file
14 a notice of appearance identifying new counsel by Friday, June 11, 2010. (June 2, 2010
15 Order (Dkt. # 41.)) Neither Defendant ever acquired new representation in this matter.
16 Consequently, an order of default was entered against Paul Financial on June 16, 2010
17 (Dkt. # 46) and against Twin Capital on July 6, 2010 (Dkt. # 48).

18 On January 21, 2011, Plaintiffs filed motions for the entry of default judgment
19 against Paul Financial and Twin Capitol. (Dkt. ## 59 & 61.) On March 7, 2011, the
20 court denied the motions on several grounds. (March 7, 2011 Order (Dkt. # 62.)) First,
21 Plaintiffs failed to file an affidavit or declaration of service, or other evidence on the
22 record, indicating that they attempted service on or provided notice to either Paul

1 Financial or Twin Capital as required under both Federal Rule of Civil Procedure
2 55(b)(2) and Local Rule W.D. Wash. CR 55(b)(2). (March 7, 2011 Order at 2-4.) In
3 addition, the court found that the Vawters provided no basis, rate, or method of
4 calculation for their request for prejudgment interest. (*Id.*) The court also found that
5 although Plaintiffs recited in their motion that their request for attorneys fees and costs
6 was supported by “the Declaration of Melissa A. Huelsman re: Attorneys Fees,” no such
7 declaration was filed with the court. (*Id.*) Accordingly, the court denied Plaintiffs’
8 motions for entry of default judgment, but permitted Plaintiffs the opportunity to correct
9 the noted deficiencies and reapply for default judgment against these two defendants
10 within ten days of the court’s March 7, 2011 order. (*Id.*)

11 On March 17, 2011, Plaintiffs filed two identical copies of their renewed motion
12 for default judgment against Paul Financial (Dkt. ## 63, 64). On March 18, 2011, one
13 day after the deadline set by the court in its March 7, 2011 order, Plaintiffs filed their
14 renewed motion for default judgment against Twin Capital (Dkt. # 67). Both motions are
15 supported by the declaration of Melissa A. Huelsman. (Huelsman Decl.) In addition,
16 Ms. Huelsman filed a declaration attesting to service of the motions for default judgment
17 upon Paul Financial and Twin Capital. (Dkt. # 66.)

18 **III. ANALYSIS**

19 Entry of default judgment is left to the court’s sound discretion. *DIRECTV, Inc. v.*
20 *Hoa Huynh*, 503 F.3d 847, 852 (9th Cir. 2007) (citing *Aldabe v. Aldabe*, 616 F.2d 1089,

1 1092 (9th Cir. 1980)).² Because granting or denying relief is within the court's
 2 discretion, a defendant's default does not automatically entitle a plaintiff to a court
 3 ordered judgment. *See Aldabe*, 616 F.2d at 1092-93; *see also Philip Morris USA, Inc. v.*
 4 *Castworld Products, Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003).

5 In *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986), the Ninth Circuit set
 6 out factors for the court to consider when determining the appropriateness of entering
 7 default judgment. Factors which may be considered include: (1) the possibility of
 8 prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the
 9 sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the
 10 possibility of a dispute concerning material facts, (6) whether the default was due to
 11 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil
 12 Procedure favoring decisions on the merits. *Id.* When considering the *Eitel* factors, all
 13 factual allegations in the plaintiff's complaint are taken as true, except for those related to
 14 damages. *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002);
 15 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). The court is not
 16 required to make detailed findings of fact. *Id.*

17 The court finds that the first *Eitel* factor weighs in favor of granting the Vawters'
 18 renewed motions for default judgment. The court finds that there is a possibility of
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20 ² Because the Vawters have filed evidence of service of their renewed motions for
 21 default judgment upon Twin Capital and Paul Financial in compliance with the local and
 22 federal rules (Dkt. # 66), the court finds that the Vawters have met the necessary notice
 requirement prior to entry of default judgment against these defendants. *See Fed. R. Civ.*
 P. 55(b)(2); Local Rules W.D. Wash. CR 55(b)(2).

1 prejudice to the plaintiff if default judgment is not granted. Taking the well-plead
2 allegations of the complaint as true, the court concludes that the Vawters have suffered
3 economic loss as a result of Twin Capital's and Paul Financial's failures to provide
4 accurate statements concerning the true costs associated with their home refinance loan.
5 Accordingly, the Vawters are entitled to be made whole.

6 The court also finds that *Eitel* factors two, three, and five also weigh in favor of
7 the entry of default judgment against Twin Capital and Paul Financial. The well-plead
8 facts in the complaint, along with the declaration of Melissa Huelsman (Dkt. # 65),
9 establish the merits of the Vawters' case against these two defendants, and there is no
10 dispute concerning the material facts. With regard to Twin Capital, the well-pleaded
11 facts indicate that Twin Capital was a mortgage broker licensed with the State of
12 Washington, and that it engaged in mortgage brokering by providing the Vawters with a
13 mortgage loan. Thus, Twin Capital was required to comply with Washington's Mortgage
14 Broker Practices Act ("MBPA"), RCW ch. 19.146. Twin Capital failed to make certain
15 disclosures to the Vawters as required by RCW 19.146.030 and RCW 19.146.0201, and it
16 collected and charged a fee in violation of these same provisions. Violations of the
17 MBPA are per se violations of the Washington Consumer Protection Act ("CPA"), RCW
18 19.86.100. *See* RCW 19.146.100. The Vawters allege that these same acts also
19 constituted violations of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601, *et seq.*

20 With regard to Paul Financial, the well-pleaded facts of the complaint indicate that
21 Paul Financial was a consumer loan company operating within Washington State, and
22 that it engaged in mortgage lending by providing the Vawters with a mortgage loan. The

1 Vawters assert that Paul Financial violated the CPA by failing to provide certain
 2 disclosures as required by the Washington Consumer Loan Act (“CLA”), RCW ch.
 3 31.04, and TILA. Violations of TILA constitute violations of the CLA, RCW 31.04.027,
 4 and violations of CLA are per se violations of the CPA, RCW 31.04.208.

5 The fourth *Eitel* factor, the sum of money at stake, also favors the entry of default
 6 judgment. The Vawters seek \$14,383.15 in damages against Twin Capital with regard to
 7 the charging of fees not properly disclosed in advance of the loan signing. In addition,
 8 they seek \$2,000 in statutory damages under TILA, and \$10,000 under the CPA (which
 9 allows for treble damages up to \$25,000),³ for a total award of \$26,383.15 against Twin
 10 Capital. The Vawters seek \$548.95 in damages against Paul Financial with regard to the
 11 charging of fees which were not disclosed correctly in advance of the loan signing. In
 12 addition, the Vawters seek \$2,000 in statutory damages under TILA, and a trebling of
 13 damages under the CPA, for a total of \$4,195.80.⁴ In general, default judgment is
 14 disfavored if there are large sums of money involved. *Eitel*, 782 F.2d at 1472. The
 15 Vawters’ modest requests for damages here favor the entry of default judgment.

16 The sixth factor also favors entry of default judgment. The entry of default against
 17 Twin Capital and Paul Financial was not due to excusable neglect, but rather a
 18 withdrawal of their counsel and failure to secure new counsel. A business entity must be
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20 ³ Although the CPA permits the trebling of actual damages up to \$25,000, *see* RCW
 19.86.090, the Vawters ask for only \$10,000 under this provision. (See Dkt. # 67 at 10.)

21 ⁴ The Vawters seek \$10,000 under the CPA against Paul Financial (*see* Dkt. # 67 at 9),
 22 but the court is at a loss as to how a trebling of their \$548.95 in damages could amount to more
 than \$1,646.85.

1 represented by counsel or subject itself to the entry of default. Local Rules W.D. Wash.
2 GR 2(g)(4)(B). When neither Twin Capital nor Paul Financial secured new
3 representation, the court properly entered default orders against them. (See Dkt. ## 41,
4 45, 46, 47, 48.)

5 The seventh factor, the strong policy favoring decisions on the merits, will almost
6 always disfavor the entry of default judgment. Nevertheless, because the other factors
7 favor the entry of default judgments, the court finds on balance that entry of default
8 judgments against Twin Capital and Paul Financial is appropriate.

9 As noted above, the sum the Vawters seek against Twin Capital includes:
10 \$14,383.15 in damages, plus \$2,000 in statutory damages under TILA, and \$10,000 under
11 the CPA for a total award of \$26,383.15. The court finds that this amount of damages is
12 reasonable and supported by the factual record. (See Huelsman Decl. (Dkt. # 65).) The
13 sum the Vawters seek against Paul Financial includes: \$548.95 in damages, \$2,000 in
14 statutory damages under TILA, and a trebling of damages under the CPA. Although the
15 Vawters state that they seek \$10,000 against Paul Financial under the CPA, the court
16 finds that an appropriate trebling of damages under the CPA would total only \$1,646.85.
17 Thus, the Vawters' total damages claim against Paul Financial amounts to \$4,195.80.
18 The court also finds that this amount of damages is reasonable and supported by the
19 record. (See *id.*)

20 Although the Vawters request an award of attorneys fees and costs against both
21 Twin Capital and Paul Financial, they fail to provide any evidentiary support for such a
22 request. Their motions recite that their requests are supported by "the Declaration of

1 | Melissa A. Huelsman re: Attorneys Fees, which is being filed concurrently herewith.”
2 | (Dkt. # 67 at 10; Dkt. # 64 at 10.) However, no such declaration has ever been filed with
3 | the court. The court previously brought the failure to file the supporting declaration to
4 | the Vawters’ attention (Dkt. # 62 at 4), but the Vawters have failed to correct this
5 | evidentiary deficiency. Accordingly, the court denies the Vawters’ request for attorneys
6 | fees and costs.

7 In addition, although the Vawters seek an award of prejudgment interest against
8 both Twin Capital and Paul Financial, they fail to provide the court with a basis for this
9 award, an appropriate rate of interest, and a specific method of calculation. The court
10 previously brought this deficiency to the Vawters' attention (*id.*), but they again have
11 failed to correct this deficiency. As a result, the court denies the Vawters' request for
12 prejudgment interest as well.

IV. CONCLUSION

14 For the foregoing reasons, the court GRANTS in part the Vawters' second motion
15 for default judgment against Paul Financial (Dkt. ## 63 & 64) in the amount of
16 \$4,195.80, and GRANTS in part the Vawters' second motion for default judgment
17 against Twin Capital (Dkt. # 67) in the amount of \$26,383.15. The court DENIES the
18 Vawters' requests for attorneys fees and costs and prejudgment interest against both
19 defendants. The court further orders the Vawters to mail a copy of this order to Twin

1 || Capital and Paul Financial within seven days of the date of this order.

2 Dated this 27th day of April, 2011.



Jim R. Blint

JAMES L. ROBART
United States District Judge